THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 13083 OF 2005

% 09-12-2005

Between:

Chiguluri Krishna Rao, President,

The Bezawada Bar Association, Vijayawada.

..... PETITIONER

AND

The Station House Officer, II Town Police Station, Vijayawada & Others.

.....RESPONDENTS

For the Petitioner : TAKEN UP WRIT PETITION

AMICUS CURIAE : MR.C.PADMANABHA REDDY

For the Respondents : GP FOR HOME

< Gist:

> Head Note:

? CITATIONS:

1. 1986 (1) APLJ 203

2. AIR 1997 SC 610

C/15

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 13083 OF 2005

% 09-12-2005

Between:

Chiguluri Krishna Rao, President,

The Bezawada Bar Association, Vijayawada.

..... PETITIONER

AND

The Station House Officer, II Town Police Station, Vijayawada & Others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 13083 OF 2005

ORDER : (Per Hon'ble Sri Bilal Nazki, J)

This writ petition was taken up on a letter by 'The Bezwada Bar Association', in which it was alleged that one Sri. P.Sai Babu, an Advocate, was arrested in connection with a case registered under Section 332 of I.P.C. It appears that there was some incident involving the members of the Bar and the Police, where there were allegations and counter-allegations. After said Sri. Sai Babu was arrested, it was alleged that The Bezwada Bar Association President and members went to the Police Station, offered bail, but the Police Officer concerned refused to grant bail. Later, Sri Sai Babu was produced before First Chief Metropolitan Magistrate, Vijayawada. There also, the President and members of the Bar offered surety, but the Magistrate also did not grant him bail, although the offence was bailable.

The Court took notice of the letter and a writ petition was registered. An order was passed by this Court on 28.06.2005, asking for an explanation from the Magistrate concerned and also asking the

Station House Officer concerned to file the counter affidavit.

The Magistrate's explanation was received, who stated in his explanation that the detenu was brought before him on 11.06.2005 at 4 a.m. at his residence for the purpose of remand. He perused the papers. An F.I.R. had been registered in Crime No.115 of 2005 under Section 332 of I.P.C. He ordered the Police concerned to produce the accused on the next working day. He further submitted that it was an odd hour when the detenu was produced before him and 11th and 12th June, 2005 were holidays and the next working day was 13th June, 2005, and as per usual practice in the entire State of Andhra Pradesh, he directed production of accused on immediate next working day. He further submitted that there were no facilities and there was no infrastructure at his residence and even if he had ordered bail, there was nobody to prepare bail bonds after verification of solvencies. He denied that surety had been offered by the President and members of the Bar at his residence. The Advocates met him only after the Police had taken away the detenu. He had also drawn the attention of the Court to a judgment in **Dr.P.C.Kakar v. D.G.P., A.P., Hyderabad,** in which the Government was directed to provide necessary facilities to all the Magistrates in the State to dispose of the bail applications presented at their residences outside office hours or holidays and to pass orders to remand the accused to Judicial custody.

The counter was filed, in which it is stated that a Home Guard and Police Constables had filed a complaint against one Sri Sai Babu, Advocate and a case was registered in Crime No.115 of 2005 under Section 332 of I.P.C. He had examined 9 witnesses and recorded their statements. He arrested the accused on 10.06.2005 at 23.30 hours and brought him to the Police Station at 23.45 hours. Father of the accused was informed through a telegram. He further submitted that he informed the accused of the allegations against him and offered him bail on production of two sureties. He also produced him before the Magistrate at 4 a.m. on 11.06.2005. He did not keep the accused in custody without offering bail. He submitted that even

when bail was offered to the accused, he declined the same and did not furnish the sureties.

After the explanation of the Magistrate was filed and after the counter was filed, this Court passed another order on 05.07.2005, by which, we directed the learned Advocate-General to appear in the matter and we also requested Sri C.Padmanabha Reddy to assist the Court a s *Amicus Curiae*. After hearing the learned Counsel and after perusing the judgment in **Dr.P.C.Kakar**'s case (1st supra), we directed constitution of a Committee. It appears, now a Committee has been constituted, it has considered the views of all the persons concerned, including some Advocates and has filed a report.

We have gone through the report and heard learned Counsel for the parties.

Article 22 (1) of Constitution lays down;

> *"No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."*

Sub-clause (2) was added to Article 22 by the Constitution (Eighty-sixth Amendment) Act, 2002, which lays down;

> *"22(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate."*

The exceptions to this Article are mentioned in the Article itself. One of the exceptions is that the time spent for journey from the place of arrest to the Court of the Magistrate shall be excluded from the outer time frame of twenty-four hours. Other exceptions to this Rule are that if a person who is detained, is an enemy alien or a person who is

arrested or detained, is detained as a measure of Preventive Detention. Then, under Article 22 (4), (5), (6) and (7), the mode is prescribed while dealing with persons who have been detained under Preventive Detention Laws. In our view, in case of arrest by Police, there is no choice for anybody neither the Courts nor the Police, but to apply Article 22 (1) and (2) in letter and spirit, which would in other words mean that if a person is arrested, he shall be –

a. informed, as soon as may be, of the grounds for such arrest;

b. he shall not be denied the right to consult and to be defended by a legal practitioner of his choice; and

c. he shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest. The time taken for journey from place of arrest to the Court of Magistrate may be excluded while computing twenty-four hours.

In view of the Constitutional mandate and specific provisions contained in the Code of Criminal Procedure, we do not think that any difficulties, which the Police or the Magistracy of the State might be facing, can be a reason for violating the mandate of Article 22 of the Constitution. The learned Advocate-General and the learned Senior Counsel Mr.C.Padmanabha Reddy, *Amicus Curiae*, have conceded this position, and in fact, even the report of the Committee suggests that there cannot be any quarrel with the preposition of law that Article 22 (1) and (2) have to be implemented in letter and spirit. The only defence taken by the State is that they do not have the requisite infrastructure. Absence of requisite infrastructure cannot be a reason for defeating the fundamental rights of the detenus. These issues have been attracting the attention of the Courts for number of years, but we are sorry to note that even the basic requirements of Constitutional mandate are not being adhered to. This is highly

deprecable that an accused, after arrest, is invariably produced before the Magistrate almost at the end of twenty-four hours. If common sense is applied, it would be clear that if an accused is arrested at any point of time during twenty-four hours, he can still be produced during working hours before the Magistrates. But the common practice is that the Police waits for twenty-three hours and forty-five minutes and utilizes the last fifteen minutes for going to the Magistrate. Article 22 of the Constitution is not being followed in spirit, but in letter. The language of Article 22 (2) prescribes that immediately after arrest, the accused must be produced before the Magistrate, but in cases where there are sufficient reasons, the Police may delay the production of detenu, but not in any case, beyond twenty-four hours. What the Police has come to understand is that they have to produce the detenu before the Magistrate a few minutes before twenty-four hours. It needs to be impressed upon the Police Officers concerned that they must produce the detenus immediately after arrest, before the Magistrates and should not wait in all cases for twenty-three hours and forty-five minutes.

The whole law on the subject of rights of the detenus arrested by the Police in the light of Articles 21 and 22 was considered by Supreme Court in **D.K.Basu v. State of West Bengal**. After going through the whole law on the subject, it had given certain guidelines, which have to be followed. They are reiterated hereunder to emphasize the importance of the rights of the detenus;

> *"(1) The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.*
>
> 2. *That the Police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned*

by the arrestee and shall contain the time and date of arrest.

3. *A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.*

4. *The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.*

5. *The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.*

6. *An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.*

7. *The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the*

arrestee.

8. *The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.*

9. *Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.*

(10)The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11)*A police central room should be provided at all Districts and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police central room it should be displayed on a conspicuous notice board."*

The apathy of the Governments is well demonstrated by the fact that even after eight years of the judgment, no Legislation in this regard was made. The Supreme Court was conscious, with its experience with the State functionaries, that the directives issued by it may not be implemented therefore, an exception was created by the Supreme Court itself by holding that in case of violation of any of the directives of the Supreme Court, the officials concerned, besides being proceeded against departmentally, could also be convicted for committing contempt and contempt applications could be entertained by High Courts for violation of the directives of the Supreme Court. But in spite of it, our experience shows that these directives are not

being followed. This Court, as early as in the year 1986, gave directions for constitution of a Committee in **Dr.P.C.Kakar**'s case (1st supra). Twenty years have passed, but the directives have not been carried. The State Government has no option but to produce the detenus within twenty-four hours before the Magistrates. It must be clear to all. Similarly, when a detenu is produced before the Magistrate, the Magistrate has no option but to entertain the matter and pass appropriate orders for remand or bail. In no case, the Magistrate can ask a person to come after three days, as there are vacations, to seek bail in a bailable offence.

Section 436 (1) of the Code of Criminal Procedure lays down;

> *"436. (1)When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail."*

The language of this Section is so clear that the choice to leave the Police Station or the Magistrate's Court on bail, is with the accused and neither with the Magistrate nor with the Police. Whenever during his custody, the accused offers bail, he has to be let off, whether at that time he is before the Court or in the custody of the Police. There is a proviso also to this Section that instead of taking sureties, the Court may discharge detenu on a personal bond for his appearance.

In the present case, the Magistrate knew that the detenu, who was produced before him, was accused of a bailable offence, he was a practicing Advocate and in our view, he was entitled to be released by the Magistrate even on a personal bond and the personal bond would have not required much infrastructure or Paraphernalia. It is the mind set of the Magistracy and the Police which is responsible to a large extent to the apathy in which we find ourselves.

We accept the report of the Committee and direct the State

Government to give effect to the recommendations within a period of six months. The directions given by us, by order dated 05.08.2005, shall also remain operative and the Government shall also take steps to make necessary laws in order to give a statutory sanction to these directions. It is none of the businesses of the Magistrate or this Court to recognize or appreciate the difficulty of the Jail authorities, who have shown their inability to receive the prisoners after the working hours. Some mechanisms would have to be found by the Government and the Jail authorities to receive the prisoners even after working hours. Once the Government takes steps with regard to the recommendations made by the Committee, they shall forward the decisions to the Registrar (Judicial) of this Court and a copy of it shall also be forwarded to Sri C.Padmanabha Reddy, Senior Advocate, High Court of A.P., who is requested to inform the Court, after six months, whether this order has been complied with or not.

With these observations, the writ petition is disposed of. No order as to costs.

_____

(BILAL NAZKI, J)

09-12-2005

_____

(G.CHANDRAIAH, J)

N.B:

L.R. Copies to be marked.

(B/o)

ajr